

HOWARD C. RUBIN
KESSLER & COLLINS, P.C.
2100 ROSS AVENUE, SUITE 750
DALLAS, TEXAS 75201
214-379-0722 [TELEPHONE]
214-373-4714 [FACSIMILE]
ATTORNEY FOR LIT-NORTHEND, LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In Re	§	Chapter 11
AEROPOSTALE, INC., <i>et al.</i> ,	§	Case No. 16-11275 (shl)
Debtors. ¹	§	(Jointly Administered)
	§	Objection Deadline: July 22, 2016-12:00 pm
	§	Hearing: July 25, 2016 – 2:00 pm EDT

**LIMITED OBJECTION OF LIT-NORTHEND, LLC TO DEBTORS' MOTION FOR
AN ORDER (I) APPROVING DISCLOSURE STATEMENT; (II) APPROVING
NOTICE OF DISCLOSURE STATEMENT HEARING; (III) SHORTENING
NOTICE FOR DISCLOSURE STATEMENT OBJECTION DEADLINE,
DISCLOSURE STATEMENT HEARING AND PLAN OBJECTION DEADLINE;
(IV) ESTABLISHING A RECORD DATE; (V) ESTABLISHING NOTICE AND
OBJECTION PROCEDURES FOR CONFIRMATION OF THE PLAN;
(VI) APPROVING SOLICITATION PACKAGES AND PROCEDURES FOR
DISTRIBUTION THEREOF; (VII) APPROVING THE FORM OF BALLOT AND
ESTABLISHING PROCEDURES FOR VOTING ON THE PLAN;
(VIII) APPROVING THE FORM OF NOTICE TO NON-VOTING CLASSES
UNDER THE PLAN; (IX) APPROVING SALE AND BIDDING PROCEDURES
FOR SALE OF SUBSTANTIALLY ALL OF DEBTORS' ASSETS PURSUANT TO
THE PLAN; (X) APPROVING PROCEDURES FOR ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES; (XI) APPROVING RELATED NOTICES;
AND (XII) GRANTING RELATED RELIEF**

TO THE HONORABLE UNITED STATES BANKRUPTCY COURT:

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal tax identification number, as applicable, are as follows: Aeropostale, Inc. (3880); Aeropostale West, Inc. (7013); Jimmy'Z Surf Co., LLC (0461); Aero GC Management LLC (4257); Aeropostale Procurement Company, Inc.. (8518); Aeropostale Licensing, Inc. (8124); P.S. from Aeropostale, Inc. (5900); GoJane LLC (4923); Aeropostale Canada Corp. (N/A); Aeropostale Holdings, Inc. (7729); and Aeropostale Puerto Rico, Inc. (6477). The Debtors' corporate headquarters is located at 112 West 34th Street, 22nd Floor, New York, NY 10120.

LIT-NORTHEND, LLC (“LIT”) lodges the following objections to *Debtors’ Motion for an Order (1) Approving Disclosure Statement; (2) Approving Notice of Disclosure Statement Hearing; (3) Shortening Notice for Disclosure Statement Objection Deadline, Disclosure Statement Hearing and Plan Objection Deadline; (4) Establishing a Record Date; (5) Establishing Notice and Objection Procedures for Confirmation of the Plan; (6) Approving Solicitation Packages and Procedures for Distribution Thereof; (7) Approving the Form of Ballot and Establishing Procedures for Voting on the Plan; (8) Approving the Form of Notice to Non-Voting Classes Under the Plan; (9) Approving Sale and Bidding Procedures for Sale of Substantially All of Debtors’ Assets Pursuant to the Plan; (10) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (11) Approving Related Notices; and (12) Granting Related Relief* (the “Motion”) and in support thereof would show as follows:

PRELIMINARY STATEMENT

1. The Motion, accompanying disclosure statement, and other supporting documentation provide contradictory information and create confusion with respect to Debtors’ and landlords’ notice and objection obligations for assumption/assignment/sale of leases and cure of monetary defaults. Further the timetable set out in these documents may violate landlords’ right to due process in that they deny landlords (including LIT) the ability to effectively respond to claims that an assignee or purchaser can provide adequate assurance of future performance to the landlord counterparties. As more fully set forth below, LIT lodges this limited objection to the Motion and disclosure statement and requests that any order granting the Motion and approving the Disclosure statement provide affected landlords with clear milestones

and deadlines as well as the ability to do due diligence and effectively respond to cure notices and notices of assumption/assignment of leases.

THE PARTIES AND THE LEASE

2. LIT leases approximately 315,000 square feet of warehouse space located at 2 Brick Plant Road, South River, New Jersey (the “Premises”) to Debtor Aeropostale, Inc. for Debtors’ east coast distribution facility through a lease that is scheduled to expire on May 31, 2021. The current rent due under this lease is \$169,999.25 per month.

OBJECTIONS, ARGUMENT AND AUTHORITIES

3. In their effort to pull together a disclosure statement plan and supporting documentation under the accelerated milestones set forth in the debtor-in-possession facility, Debtors appear to have created deadlines that do not make any sense.

4. According to the Motion, Debtors have requested that the deadline for bids to purchase their assets be August 18, 2016 and that qualified bidders will be notified by 5:00 p.m. on August 19, 2016 (Motion ¶¶8 and 60(b),(c), and (d)).

5. In addition, according to the Motion and disclosure statement, Debtors are to notify counterparties to unexpired leases of amounts it believes are necessary to cure defaults pursuant to 11 U.S.C. § 365(b)(1)(A) no later than August 9, 2016 (Motion ¶64(a) and disclosure statement section I(2)). The Motion also states that Debtors shall file and serve on counterparties a notice of assumption, assignment and sale not later than August 22, 2016 (Motion ¶64(b)).

6. The Motion then provides that the counterparties are to file “objections to (a) the proposed assumption, assignment, and sale of the Assumed Contracts [parentheticals deleted] and (b) if applicable, the proposed Cure Costs [parentheticals deleted] no later than August 19, 2016 at 12:00 p.m. (Eastern Time).”(Motion ¶64(c)).

7. As a result, the Motion requests an impossible deadline for lease counterparties to object to “assumption and assignment” (August 19) which is before the deadline established for notice of what leases will be assumed assigned and/or sold (August 22). LIT objects to this deadline language and requests that it be clarified.

8. Moreover, the proposed order attached to the Motion creates further confusion as it varies from the relief requested in the Motion and the information in the disclosure statement. The form of order requires that counterparties file objections to the Notice of Assumption and Assignment, and include in same a statement of cure costs, no later than 9:00 a.m. on August 23, 2016. This varies from the representations made in the Motion (see paragraph 7 above) and section I(2) on page 36 of the disclosure statement which requires objections to the proposed Cure Obligations to be filed within 10 days after “service of notice of Debtors’ proposed assumption and associated Cure Costs”, the deadline for which appears to be August 9, 2016.

9. LIT requests that these contradictory and confusing deadlines be revised so that all parties to unexpired leases will know what is expected of them.

10. Rule 6006(a) of the Federal Rules of Bankruptcy Procedure provide that proceeding to assume, reject or assign an unexpired lease, other than as part of a plan, are governed by Rule 9014. That rule requires reasonable notice and opportunity to be heard. Although the plan contains language regarding assumption and rejection of leases, the procedure requested for assignment, assumption and sale is contained in the Motion and Disclosure Statement and not the plan. As is more fully stated below, this procedure falls short of providing a reasonable opportunity to be heard and violates LIT’s (not to mention the other landlords’) right to due process of law.

11. Due process consists of apprising interested parties of the pendency of an action and affording them the opportunity to present their objections. *In re Texaco, Inc.*, 254 B.R. 536, 561 (Bankr. S.D. N.Y. 2000) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 399 U.S. 306, 314, 70 S. Ct. 692, 94 L. Ed. 865(1950)). Notice must be given in time for the aggrieved party to take meaningful action in response to the impending deprivation of rights. *Dinova v. Harris (In re Dinova)*, 212 B.R. 443 (2nd Cir B.A.P. 1997) (citing *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 113, 98 S. Ct. 1554, 1562, 56 L. Ed. 2d 30 (1978)).

12. With respect to the issues in this case, a notice must afford a reasonable time in which to respond. *American General Financial Services v. Bryan (In re Bryan)*, 357 B.R. 12, 20 (Bankr. S.D. N.Y. 2006). Notwithstanding the contradictory and confusing deadlines, if the deadline for notice of which unexpired leases will be assumed, assigned and sold is, in fact, the day before the confirmation hearing, that procedure violates LIT's and other landlords' right to due process. They cannot effectively conduct due diligence on a proposed assignee, determine whether the assignee/purchaser can meet the requirements of "adequate assurance of future performance", file an objection by 9:00 a.m. on the day after the notice (August 23, 2016) and be ready to argue the issue (perhaps with witnesses) by 11:00 a.m. that day. The procedure proffered by Debtors results in the taking of a landlord's property interest without providing due process. Consequently, LIT objects to this procedure for litigating assumption/assignment/sale of unexpired leases and requests that this court fashion an order that provides due process to landlords.

13. LIT joins in the objections of other parties to the extent that they are not inconsistent with this limited objection.

CONCLUSION

Wherefore, LIT-Northend, LLC respectfully requests that the Court deny the Motion that is the subject of this objection; require that the language noted above be clarified; that the procedure used for noticing assumption, assignment and sale be revised to provide due process; and grant this party any additional relief to which it may show itself entitled.

Respectfully submitted,

KESSLER & COLLINS
A Professional Corporation

By: /s/ Howard C. Rubin
HOWARD C. RUBIN
State Bar No. 17361400
hrubin@kesslcollins.com

2100 Ross Avenue, Suite 750
Dallas, Texas 75201
(214) 379-0722 Office
(214) 373-4714 Facsimile

*ATTORNEYS FOR CREDITOR AND
PARTY-IN-INTEREST LIT-NORTHEND,
LLC*

CERTIFICATE OF SERVICE

I, Howard C. Rubin, hereby certify that on July 21, 2016, I caused a true and correct copy of the above instrument to be sent via the Court's ECF System to all parties registered on same, or by first class mail, postage prepaid or e-mail, on the parties listed below.

/s/ Howard C. Rubin
HOWARD C. RUBIN

SERVICE LIST

Office of the United States Trustee
201 Varick Street, Suite 1006
New York, New York 10014
Attn: Brian Masumoto and Susan Albeit

Hugh McCullough
Davis Wright Tremaine LLP
1201 Third Ave., Ste 2200
Seattle, WA 98101

Steven G Poland
Davis Wright Tremaine LLP
865 S Figueroa St., Ste 2400
Los Angeles, CA 90017-2566

Albert Togut
Togut Segal & Segal LLP
One Penn Plaza, Ste 3335
New York, NY 10119
alcourt@teamtogut.com

Joseph E Shickich, Jr.
Riddell Williams P.C.
1001-4th Ave., Ste 4500
Seattle, WA 98154

John Dillman
Linebarger Goggan Blair & Sampson LLP
PO Box 3064
Houston, TX 77253
Houston_bankruptcy@publicans.com

Garrett A Fail
Ray C Schrock
Jacqueline Marcus
Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
garrett.fail@weil.com
ray.schrock@weil.com
jacqueline.marcus@weil.com

Marck E Hall
Tara J Schellhorn
Riker Danzig Scherer Hyland & Perretti
Headquarters Plaza, One Speedwell Ave.
Morristown, NJ 07962-1981
mhall@riker.com
tschellhorn@riker.com

Edmond O'Brien
Stempel Bennett Claman & Hochberg, P.C.
675 Third Ave., 31st Floor
New York, NY 10017
eobrien@sbchlaw.com

Kevin M Newman
Menter Rudin & Trivelpiece, P.C.
308 Maltbie St., Ste 200
Syracuse, NY 13204
knewman@menterlaw.com

Herbert H Slatery III
Marvin E Clements, Jr.
Office of the Attorney General
Bankruptcy Division
PO Box 20207
Nashville, TN 37202-0207

David G Aelvoet
Linebarger Goggan Blair & Sampson, LLP
711 Navarro St., Ste 300
San Antonio, TX 78205
Sanantonio.bankruptcy@publicans.com

Elizabeth Weller
Linebarger Goggan Blair & Sampson LLP
2777 N Stemmons Frwy., Ste 1000
Dallas, TX 75207
Dallas.bankruptcy@publicans.com

Amy M Williams
Patras Williams, LLC
14 Countryside Lane, Suite 100
Ringwood, NJ 07456
awilliams@pwjlaw.com,

Adam C. Rogoff
Robert T Schmidt
Andrew M Dove
Kramer Levin Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, NY 10036

William Novotny
Dickinson Wright PLLC
1850 N. Central Avenue, Ste 1400
Phoenix, AZ 85004

Rick A Steinberg
Price Meese Shulman & D'Arminio, PC
50 Tice Blvd., Ste 380
Woodcliff Lake, NJ 07677

Lee Gordon
McCreary Veselka Bragg & Allen, PC
PO Box 1269
Round Rock, TX 78680
Sonya.ragsdale@mabalaw.com

Patrick Collins
Veronique A Urban
Farrell Fritz, P.C.
1320 RXR Plaza
Uniondale, NY 11556-1320

Robert J Feinstein
Jeffrey N Pomerantz
Bradford J Sandler
Pachulski Stang Ziehl & Jones LLP
780 Third Ave., 34th Floor
New York, NY 10017-2024
jpomerantz@pszjlaw.com

David M Blau
Paul S Magy
Clark Hill PLC
151 S Old Woodward Ave., Ste 200
Birmingham, MI 48009
dblau@clarkhill.com

Douglas J Pick
Pick & Zabicki LLP
369 Lexington Ave., 12th Floor
New York, NY 10017

Jeffrey A Wurst
Ruskin Moscou Faltischek, PC
East Tower, 15th Floor
1425 RXR Plaza
Uniondale, NY 11556-1425

Howard Marc Spector
Spector & Johnson, PLLC
12770 Coit Rd., Ste 1100
Dallas, TX 75251

Dustin P Branch
Ballard Spahr LLP
2029 Century Park East, Suite 800
Los Angeles, CA 90067

S Stewart Smith
Belkin Burden Wenig & Goldman LLP
270 Madison Avenue
New York, NY 10016

Andrew B Eckstein
Blank Rome LLP
405 Lexington Avenue
New York, NY 10174-0208
aeckstein@blankrome.com

Jason S Kim
BlankRome LLP
2029 Century Park East, 6th Fl
Los Angeles, CA 90067
jkim@blankrome.com

Victoria A Guilfoyle
Blank Rome LLP
1201 Market Street, Suite 800
Wilmington, DE 19801
Guilfoyle@blankrome.com

Kay D. Brock
David Escamilla
Travis County Attorneys
PO Box 1748
Austin, TX 78767
kay.brock@traviscountytx.gov

Edward S Weisfelner
Bennett S Silverberg
Brown Rudnick LLP
Seven Times Square
New York, NY 10036

Joel Charles Shapiro
Blank Rome LLP
130 North 18th Street
Philadelphia, PA 19103-6998
shapiro-JC@blankrome.com

William C Heuer
Patricia H. Heer
Duane Morris LLP
1540 Broadway
New York, NY 10036
wheuer@duanemorris.com
phheer@duanemorris.com

Bruce J Zabarauskas
Thompson & Knight LLP
900 Third Avenue, 20th Floor
New York, NY 10022
bruce.zabarauskas@tklaw.com

James A. Stempel
Robert B Ellis
Stephen Hackney
Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
jstempel@kirkland.com
rellis@kirkland.com
Stephen.hackney@kirkland.com

Scott Rutsky
Jared D Zajac
Peter Antoszyk
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036
srutsky@proskauer.com
izajac@proskauer.com

Patrick Collins
Veronique A Urban
Farrell Fritz, PC
1320 RXR Plaza
Uniondale, NY 11556-1320
pcollins@farrellfritz.com
vurban@farrellfritz.com

Ronald Gold
Frost Brown Todd LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, OH 45202
rgold@fbtlaw.com

Robert L LeHane
Jennifer D Raviele
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178
kdwbankruptcydepartment@kelleydrye.com
rlehane@kelleydrye.com
jraviele@kelleydrye.com

David S Berman
Reimer & Braunstein LLP
Three Center Plaza
Boston, MA 02108
dberman@riemerlaw.com

Jeffrey Kurtzman
Kurtzman Stead, LLC
401 S 2nd St, Suite 301
Philadelphia, PA 19147
kurtzman@kurtzmansteady.com

David L. Pollack
Ballard Spahr LLP
51st Fl-Mellons Bank Center
1735 Market Street
Philadelphia, PA 19103
Pollack@ballardspahr.com

Richard M Meth
Fox Rothschild LLP
75 Eisenhower Parkway, Ste 200
Roseland, NJ 07068
msteen@foxrothschild.com
rmeth@foxrothschild.com

Douglas B Rosner
Vanessa P Moody
Goulston & Storrs PC
400 Atlantic Avenue
Boston, MA 02110-3333
drosner@goulstonstorrs.com
vmoody@goulstonstorrs.com

Ilan Markus
Niclas A Ferland
LeClairRyan
545 Long Wharf Drive, 9th Floor
New Haven, CT 06511
ilan.markus@leclairryan.com
niclas.ferland@leclairryan.com

Kevin M Newman
Menter Rudin & Trivelpiece P.C.
308 Maltbie Street, Ste 200
Syracuse, NY 13204-1439
knewman@menterlaw.com

David A Nold
Nold Muchinsky PLLC
10500 NE 8th Street, Ste 930
Bellevue, WA 98004
dnold@noldmuchlaw.com
bmuchinsky@noldmuchlaw.com
jgraham@noldmuchlaw.com

David W Dykhouse
Patterson Belknap Webb & Tyler LLP
1133 Avenue of Americas
New York, NY 10036-6710
dwdykhouse@pbwt.com

Elizabeth Branda Calvo
Perdue Brandon Fielder Collins & Mott
500 E Border St., Ste 640
Arlington, TX 76010
ebcalvo@pbfcml.com

Elizabeth Branda Calvo
Dustin L Banks
Perdue Brandon Fielder Collins & Mott
1919 S Shiloh Rd., Ste 310
Garland, TX 75042
dbanks@pbfcml.com

Laura J Monroe
Perdue Brandon Fielder Collins & Mott
PO Box 817
Lubbock, TX 79408
lmonroe@pbfcv.com

Owen M Sonik
Perdue Brandon Fielder Collins & Mott
1235 North Loop West, Ste 600
Houston, TX 77008
houbank@pbfcml.com

Fred B Ringel
Robinson Brog Leinwand Green Et Al.
875 Third Avenue, 9th floor
New York, NY 10022
fbr@robinsonbtog.com

Ronald M Tucker
Simon Property Group, Inc.
225 West Washington St.
Indianapolis, IN 46204
rtucker@simon.com

Andrew S Conway
Taubman Landlords
200 East Long Lake Road, Ste 300
Bloomfield Hills, MI 48304
aconway@taubman.com

Rachel R Obaldo
Texas Attorney General
Bankruptcy & Collections Division
PO Box 12548
Austin, TX 78711-2548
Rachel.obaldo@texasattorneygeneral.gov

W Steven Bryant
Steven W Golden
Locke Lord LLP
600 Travis St., Ste 2800
Houston, TX 77002
steven.bryant@lockelord.com
Steven.golden@locklord.com

Robbin L Itkin
Alexandra S Kelly
Liner LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, CA 90024
rithkin@linerlaw.com
akelly@linerlaw.com

John H Capitano
Horack Talley Pharr & Lowndes, P.A.
2600 One Wachovia Center
301 South College Street
Charlotte, NC 28202-6038
jcapitano@HorackTalley.com

David H Ealy
Trevett Cristo Salzer & Andolina
Two State St., Ste. 1000
Rochester, NY 14614
dealy@trevettcristo.com

Plaza Las Americas, Inc.
c/o Holland & Knight LLP
James H. Rollins
1180 West Peachtree St., Ste 1800
Atlanta, GA 30309
Jim.rollins@hklaw.com

Areya Holder Aurzada
Holder Law
800 West Airport Frwy., Ste 800
Irving, TX 75062

Arthur J. Steinberg
King & Spaulding LLP
1185 Avenue of the Americas
New York, NY 10036
asteinberg@kslaw.com

Jacob Wood
Atlas Capital Group, LLC
450 Park Avenue, 4th Floor
New York, NY 10022
jwood@atlas-cap.com
notices@atlas-cap.com

Louis T DeLucia
Alyson M Fiedler
Andrew M Minear
Schiff Hardin LLP
666 Fifth Avenue
New York, New York 10103
ldelucia@schiffhardin.com
afiedler@schiffhardin.com
aminear@schiffhardin.com

Daniel L Goodkin
Goodkin & Lynch LLP
1875 Century Park East, Ste. 1860
Los Angeles, CA 90067
mshakouri@goodkinlynch.com

Michael S. Tucker
Ulmer & Berne LLP
Skylight Office Tower
1660 West 2nd St., Ste 1100
Cleveland, OH 44113
mtucker@ulmer.com

Shawn M Christianson
Buchalter Nemer
55 Second Street, 17th Floor
San Francisco, CA 94105-3493
schristianson@buchalter.com

Frederick Black
Tara B. Annweiler
Greer Herz & Adams KKO
One Moody Plaza, 18th Floor
Galveston, TX 77550
tannweiler@greerherz.com